Supreme Court, U.S.
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NO. 85-476

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

October Term, 1985

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DR. JACK J. BLANKFIELD,

Petitioner

VS.

TEXAS STATE BOARD OF DENTAL EXAMINERS,

Respondent

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BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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JIM MATTOX
Attorney General of Texas

DAVID R. RICHARDS
Executive Assistant Attorney General

J. PATRICK WISEMAN
Chief, State and County Affairs

ROBERT W. GAUSS
Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-1101

Attorneys for Respondent

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QUESTION PRESENTED

DID THE STATE COURTS ERR IN HOLDING THAT PETITIONER FAILED TO ESTABLISH A DENIAL OF DUE PROCESS?

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Texas State Board of Dental Examiners, Respondent, files this Brief in Opposition to the Petition for Writ of Certiorari.

STATEMENT

The "Petition for Writ of Certiorari" is actually two petitions for Writs of Certiorari growing out of two separate administrative hearings, two separate district court reviews, and two separate appellate reviews. Although the parties are identical in both cases, the administrative hearings were held over one year apart and involved entirely different fact situations and resulted in two separate and distinct sanctions. The hearings were open to the public in accordance with The Texas Open Meetings Law.

REASONS WHY PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

The State Courts properly held that Petitioner failed to establish a deprivation of Due Process.

ARGUMENT

Petitioner's arguments in support of certiorari suffer from one fatal flaw: they assume facts which are not supported by the record.

Under the Administrative Procedure and Texas Register Act, administrative decisions are subject to judicial review under the substantial evidence rule; however, the reviewing court is authorized to take testimony concerning alleged procedural errors which do not appear of record. In both these cases such procedural errors were alleged and testimony was received and considered by the reviewing court. Petitioner, a highly interested witness, testified, and his testimony was refuted. The reviewing court held that Petitioner failed to establish deprivation of due process, which holdings were affirmed by the Court of Appeals; writ of error was refused by The Supreme Court of Texas, no reversible error.

The Petition for Writ of Certiorari is fatally flawed because he assumes, as facts, in his "Question Presented" that quorums were not maintained and that the hearings were conducted as side-shows to state conventions. Allegations are not facts and saying that something is so does not make it so. These allegations and the testimony in support thereof were before the reviewing court as was the refuting testimony.

Petitioner's "Reasons For Granting Writ" are likewise flawed. Basic guidelines have been formulated to provide Due Process in administrative hearings. The cases cited by Petitioner, in his petition, articulate these guidelines; the courts below have held that the record, including the testimony adduced before the reviewing court, fails to establish that he comes within such guidelines.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JIM MATTOX
Attorney General of Texas

DAVID R. RICHARDS
Executive Assistant
Attorney General

J. PATRICK WISEMAN
Chief, State and County Affairs

ROBERT W. GAUSS
Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-1101

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregong instrument has been served by depositing same in the United States mail, certified, return receipt requested addressed to: David W. Showalter, 5959 West Loop South, Suite 424, Bellaire, Texas 77401 on this 10 day of October, 1985.

ROBERT W. GAUSS